

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte WALTER D. BAUMAN

Application No. 10/602,286

MAILED

JAN 11 2006

PAT & T.M OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on November 7, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

A review of the file indicates that the appeal brief filed March 17, 2005 does not fully comply with 37 CFR § 41.37(c).

37 CFR § 41.37(c) states:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(I) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(ix) *Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix.* An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

A review of the application indicates that the following appropriate sections are missing from the appeal brief filed March 17, 2005:

- 1) "Evidence appendix" as set forth in 37 CFR § 41.37(c)(1)(ix); and
- 2) "Related proceedings appendix" as set forth in 37 CFR § 41.37(c)(1)(x).

A supplemental appeal brief that is in compliance with the headings as set forth under 37 CFR § 41.37 are required. For more information on the Board's new rules see the web page entitled More Information on the Rules of Practice Before the BPAI, Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>

Application No. 10/602,286

Also, on August 1, 2005, appellant filed a request to reopen prosecution together with an amendment. A review of the file reveals that the request and amendment were not considered by the examiner. Before further review, the examiner must give a clear indication to the disposition of the request and amendment filed August 1, 2005.

Accordingly, it is

ORDERED that this application be returned to the examiner to: 1) hold the appeal brief of March 17, 2005 defective; 2) request appellants to file a supplemental appeal brief in compliance with 37 CFR § 41.37; 3) consider the supplemental appeal brief, and if necessary, vacate the examiner's answer mailed May 31, 2005, and issue a new examiner's answer; 4) consider the request to reopen prosecution and amendment filed August 1, 2005; and 5) for such further action as may be appropriate.

Application No. 10/602,286

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of this appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS  
AND INTERFERENCES

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